Supreme Court, U.
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No. 93-149

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1993

ROBERT D. FISH,

Petitioner,

vs.

JOAN MARIE COLLINGS, *et al*,

Respondents.

OPPOSITION

TO

PETITION FOR CERTIORARI

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STATEMENT OF THE CASE

Petitioner's complaint set forth two malicious prosecution claims against Respondents. Both claims were dismissed by the trial court. Dismissal of the first claim followed an order sustaining the respondents demurrer, and the second was entered after the court granted respondents' motions for summary judgment. The California Court of Appeal, Fourth Appellate District, affirmed. The California Supreme Court denied review.

REASONS FOR DENYING THE PETITION

The petitioner, Robert Fish, attempted to plead two claims against the Respondents. Both claims were predicated upon the California law defining the judicially disfavored tort of malicious prosecution.

The first claim was that the Respondents "maliciously prosecuted" an action in the United States Bankruptcy Court objecting to the discharge of an obligation of Robert Fish. The trial court sustained a demurrer to this claim. Using the vocabulary of preemption, the California Court of Appeal determined

as a matter of California law and public policy that the California courts would not concern themselves with the efforts of a litigant in a federal court to obtain vindication of a right or privilege granted by federal law. To the extent that any such action is taken for an improper or illegal purpose, the courts of California leave the parties to whatever remedy may be available from the federal judiciary under federal law.

The second claim was that the respondents "maliciously prosecuted" an action in the Superior Court of California. It was the underlying claim in this action which the respondents hade sought to avoid having discharged when Mr. Fish filed his petition under Chapter 7 of the Bankruptcy Code.

The trial court granted summary judgment in favor of the respondents reasoning that a discharge in bankruptcy did not provide the required predicate for the tort of malicious prosecution under California law. Defining the "favorable termination" necessary to form the basis for a malicious prosecution action is purely a question of state law. The court of appeal held a discharge in bankruptcy does not provide the required

prerequisite as it is a "technical or procedural" termination of the preceeding action, not one unambiguously demonstrating the absence of probable cause to initiate the action. *(Petition, Appendix 1 at p. 46)*.

In short, there is no *bona fide* basis for review by this court. The purported federal issues are illusory. The issues are those of California law upon which there has been a full review by the courts of California.

CONCLUSION

The petition, although couched in a constitutional veil, really asks the court to review questions of California law decided by the California courts.

The petition for certiorari should be denied.

Respectfully submitted,
ALFORD & MACLEOD

by: _____
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